STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 26, 2005
v	No. 252722 Calhoun Circuit Court
CALEB MATTHEW BANKS, Defendant-Appellant.	LC No. 2002-004767-FC

Before: Fort Hood, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(c), and one count of first-degree home invasion, MCL 750.110a(2). He was sentenced to concurrent terms of 23 to 50 years' imprisonment for the CSC convictions, and 11 to 20 years' imprisonment for the home invasion conviction. Defendant appeals as of right, and we affirm.

Defendant's convictions arise from the sexual assault of his friend Robert Taylor's girlfriend. The victim and her two young children were getting ready to leave their apartment early one morning when defendant entered the apartment, forced the victim into her bedroom, and assaulted her repeatedly.

Defendant first alleges that the trial court abused its discretion when it admitted into evidence a photo of the hallway area of the victim's apartment, because it depicts a crucifix hanging on the wall. Defendant contends that the photo bolstered the victim's credibility with the jury and was inadmissible under MCL 600.1436 and MRE 610. We disagree. The decision whether to admit evidence is within the trial court's discretion, and this Court only reverses such decision where there is an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). However, decisions regarding the admission of evidence frequently involve preliminary questions of law, e.g., whether a rule of evidence or statute precludes admissibility of the evidence. This Court reviews questions of law de novo. *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998).

Defendant alleges that the prosecutor improperly introduced the photo in violation of MCL 600.1436, which provides, in relevant part, that "[n]o witness may be questioned in relation to his opinions on religion, either before or after he is sworn." The purpose of MCL 600.1436 is to avoid the possibility of prejudicing a jury against a witness based upon the

witness' religious beliefs. *People v Jones*, 82 Mich App 510, 516; 267 NW2d 433 (1978). MCL 600.1436 is inapplicable to the present case because the subject of religious beliefs, opinions, or symbols was never raised at trial. For this reason, defendant's argument that the photo was inadmissible under MRE 610 also fails.[1]

Defendant further alleges that the photo was more prejudicial than probative because the assaults took place in the bedroom. However, defendant was also charged with home invasion, and the victim described the entryway to the apartment in relationship to the bedroom where the sexual assaults occurred. Prosecutors are entitled to give the jury an intelligible presentation of the full context in which disputed events took place. *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). The trial court did not abuse its discretion in admitting the photo because it was relevant to and probative of the layout of the apartment and was not overly prejudicial to defendant.

Defendant next alleges that the trial court erred when it allowed jurors to submit questions for witnesses during trial. We disagree. Because defendant did not object to either the instruction that allowed the jurors to ask questions, or the specific questions challenged on appeal, we review this unpreserved issue for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Defendant contends that this practice should be prohibited as a matter of law reform, and that the present occurrences constitute structural error requiring reversal. However, in Michigan, "the questioning of witnesses by jurors, and the method of submission of such questions, rests in the sound discretion of the trial court." *People v Heard*, 388 Mich 182, 188; 200 NW2d 73 (1972).[2] Further, the record reveals that the trial court properly screened the questions and asked only those that were proper. Accordingly, defendant has not demonstrated plain error. *Carines, supra*.

Defendant next alleges that the trial court erred when it refused to suppress his statement made during his police interview because he was incompetent to waive his *Miranda*[3] rights, and his statement was coerced. We disagree. In determining whether a defendant has knowingly and intelligently waived his *Miranda* rights, this Court reviews de novo the entire record, but gives deference to a trial court's findings at a suppression hearing and will not disturb a trial court's factual findings unless they are clearly erroneous. *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Whether a statement was voluntarily given and whether a waiver of *Miranda* rights was voluntary are distinct issues, but involve the same inquiry. *People v Daoud*, 462 Mich 621, 635-639; 614 NW2d 152 (2000). This Court reviews the issue of voluntariness independent of the trial court, but will affirm the trial court's decision unless it is left with a definite and firm conviction that a mistake was made. *People v Sexton (After Remand)*, 461

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[1] Indeed, review of the record reveals that the prosecution did not utilize any religious symbol or belief of the victim to bolster her credibility.

[2] In light of Supreme Court precedent, the request for legal reform should be directed to the Supreme Court or the Legislature.

[3] *Miranda v Arizona*, 385 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Mich 746, 752; 609 NW2d 822 (2000). Deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses. *Id.*

The record demonstrates that defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights. While it is undisputed that defendant had been consuming alcohol and drugs, the record shows that the detective followed proper procedure to determine defendant's capacity to effectively waive his rights before interviewing defendant, and obtained defendant's waiver and statement absent coercion. Further, intoxication is only one aspect of the totality of the circumstances approach to assessing voluntariness and is not dispositive of the issue of voluntariness. *People v Leighty*, 161 Mich App 565, 571; 411 NW2d 778 (1987). We cannot conclude that the trial court's decision was clearly erroneous under these circumstances.

Defendant also argues that he is entitled to resentencing because our Supreme Court's decision in *People v Claypool*, 470 Mich 715, 731 n 14; 684 NW2d 278 (2004) is not binding precedent. We rejected the identical argument in *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004). Accordingly, we decline to address this issue.

Further, because defendant did not contest the scores assigned to the offense variables based upon the substance of each variable and the facts of the present case, defendant has abandoned any such argument. "Defendant may not leave it to this Court to search for a factual basis to sustain or reject his position." *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Patrick M. Meter
/s/ Bill Schuette